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OLE #78-1736/1

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MEMORANDUM FOR: Assistant Legislative Counsel

SUBJECT : HR 12171 - A Bill to Strengthen the Right of Access
of the Comptroller General to Public Records

1. HR 12171 is of direct interest and concern to the General Counsel, the Inspector General, and the Director of Finance. We assume you have solicited their comments too.

2. As we interpret the Bill, its practical effect would be to eliminate confidential funds as a resource available to the Executive Branch. Authority to account for the expenditure of funds solely on the certificate of an Officer of the Government is meaningless if he is subsequently to be required to produce complete documentation supporting the expenditure. Moreover, the Bill seems to place a restraint on the power of Congress to grant confidential funds authority in subsequent legislation by requiring such legislation specifically to repeal or modify this one. The Bill seems self-defeating.

3. The Bill would make it impossible for the Director to fulfill his responsibility to protect intelligence sources and methods by requiring that he surrender to the Comptroller General without restriction or selectivity all records relating to any particular expenditure. Once having surrendered them, they would become available to any and all employees of the General Accounting Office, and they could release their findings to any Congressional Committee having legislative or oversight responsibilities over the subject matter of the expenditure. The Director will have lost control completely.

4. While well beyond the province of this Office, we wonder whether the Bill doesn't raise a constitutional issue. It seems to offer significant potential for erosion of the constitutional separation of powers.

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Deputy Comptroller

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